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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

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Chapter I
Introduction

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, convened in accordance with General Assembly resolution 58/248 of 23 December 2003, met at United Nations Headquarters from 29 March to 8 April 2004.

2. In accordance with paragraph 5 of General Assembly resolution 50/52 of 11 December 1995, the Special Committee was open to all States Members of the United Nations.

3. The Special Committee held two meetings, the 245th meeting, on 29 March, and the 246th meeting, on 7 April. The Working Group of the Whole, established at the 245th plenary meeting, held 7 meetings, the 1st and 2nd meetings on 29 March; the 3rd and 4th meetings on 30 March; the 5th meeting on 1 April; the 6th meeting on 2 April; and the 7th meeting on 5 April. Informal consultations were also held on 1 and 2 April 2004.

4. On behalf of the Secretary-General, the session was opened by the Assistant Secretary-General for Legal Affairs, Ralph Zacklin, Officer-in-Charge of the Office of Legal Affairs.

5. At its 245th meeting, on 29 March 2004, the Special Committee, bearing in mind the terms of the agreement regarding the election of the officers reached at its session in 1981[1] and taking into account the results of the pre-session informal consultations among its Member States held on 22 March 2004, elected its Bureau, as follows:

Chairman:
Carl Peersman (Netherlands)

Vice-Chairmen:
Zlatko Dimitrov (Bulgaria)
Mohammed Haj Ibrahim (Syrian Arab Republic)
Rolando Ruiz-Rosas (Peru)

Rapporteur:
Sabri Chaâbani (Tunisia)

6. The Bureau of the Special Committee also served as the Bureau of the Working Group of the Whole.

7. The Director of the Codification Division of the Office of Legal Affairs, Václav Mikulka, acted as Secretary of the Special Committee. The Principal Legal Officer of the Division, Anne Fosty, acted as Deputy Secretary of the Special Committee and Secretary to its Working Group of the Whole. The Codification Division provided the substantive services for the Special Committee and its Working Group of the Whole.

8. Also at its 245th meeting, the Special Committee adopted the following agenda (A/AC.182/L.115):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the questions referred to in General Assembly resolution 58/248 of 23 December 2003, in accordance with the mandate of the Special Committee as set out in that resolution.
6. Adoption of the report.

9. General statements touching upon all items or upon several of them were made at the 245th meeting as well as, in some instances, prior to the consideration of each of the specific items in the Working Group. The substance of those general statements is reflected in the relevant sections of the present report.

10. With regard to the question of the maintenance of international peace and security, the Special Committee had before it all the related reports of the Secretary-General,[2] in particular the most recent report, entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions" (A/58/346), and the 1998 report on the matter containing a summary of the deliberations and main findings of the ad hoc expert group meeting convened pursuant to paragraph 4 of General Assembly resolution 52/162 (A/53/312); a revised working paper submitted by the Russian Federation at the current session entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures" (A/AC.182/L.114/Rev.1; see para. 32 below); a revised working paper submitted by the Russian Federation at the 2003 session entitled "Declaration on the basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.114);[3] an addendum to the revised working paper submitted by the Russian Federation at the 2002 session entitled "List of proposals and amendments to the Russian working paper entitled 'Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation'" (A/AC.182/L.100/Rev.1/Add.1);[4] a revised working paper submitted by the Russian Federation at the 2000 session of the Committee entitled "Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100/Rev.1);[5] a working paper submitted by the Russian Federation at the 1998 session of the Committee, entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100);[6] a revised working paper submitted by the Libyan Arab Jamahiriya at the 2002 session of the Special Committee on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110/Rev.1);[7] and a working paper submitted by the Libyan Arab Jamahiriya at the 2001 session of the Committee on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110 and Corr.1).[8]

11. Furthermore, also with regard to the question of the maintenance of international peace and security, the Special Committee had before it an informal working paper submitted by the Russian Federation at the 1997 session of the Committee, entitled "Some views on the importance of and urgent need for the elaboration of a draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts" (A/AC.182/L.89/Add.1);[9] a working paper submitted by the Russian Federation at the 1998 session of the Special Committee, entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" (A/AC.182/L.89/Add.2 and Corr.1);[10] a revised working paper submitted by the delegation of Cuba at the 1998 session of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness" (A/AC.182/L.93/Add.1);[11] a revised proposal also submitted at the 1998 session by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security (A/AC.182/L.99);[12] a working paper submitted at the 1999 session of the Special Committee by Belarus and the Russian Federation containing a draft resolution of the General Assembly (A/AC.182/L.104/Rev.1);[13] and a revised working paper submitted by Belarus and the Russian Federation at the 2001 session of the Committee containing a revised version of a draft resolution of the General Assembly (A/AC.182/L.104/Rev.2).[14]

12. In addition, the Special Committee had before it a revised working paper submitted by Japan, the Republic of Korea, Thailand and Uganda at the current session regarding the working methods of the Special Committee (A/AC.182/L.108/Rev.3) (see para. 111 below); a revised working paper submitted by Japan and the Republic of Korea at the 2003 session containing a draft paragraph to be inserted in the report of the Special Committee (A/AC.182/L.108/Rev.2);[15] a proposal submitted by Japan at the 2002 session on further revisions to the draft paragraph to be inserted in the report of the Special Committee (A/AC.182/L.108/Rev.1);[16] a proposal submitted by Japan at the 2000 session, for a draft paragraph to be inserted in the report of the Special Committee to improve its working methods and enhance its efficiency (A/AC.182/L.108);[17] and a working paper submitted by Japan also at the 2000 session, entitled "Ways and means of improving the working methods and enhancing the efficiency of the Special Committee" (A/AC.182/L.107).[18]

13. At its 246th meeting, on 7 April, the Special Committee adopted the report of its 2004 session.

Chapter II

Recommendations of the Special Committee

14. The Special Committee submits to the General Assembly:

(a) As regards the question of the maintenance of international peace and security, in particular, the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions, the recommendation in paragraphs 27 and 28 below;

(b) As regards the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, the recommendation in paragraph 110 below.

Chapter III

Maintenance of international peace and security

A. Implementation of the Charter provisions related to assistance to third States affected by sanctions

15. The Special Committee considered the question of the implementation of the provisions of the Charter related to assistance to third States affected by sanctions during the general exchange of views held at its 245th meeting, on 29 March 2004, as well as during the 1st and 2nd meetings of the Working Group of the Whole, also on 29 March.

16. Some delegations reiterated the importance that they attached to the consideration of the topic, emphasizing that it had been referred to the Special Committee by the General Assembly for consideration on a priority basis. In that regard, it was also noted that the question of assistance to third States had been on the agenda of the Special Committee for many years and the hope was expressed that efforts would be stepped up so that progress could be made on the question as soon as possible.

17. Several delegations voiced their support for the continuing consideration of the matter within the context of the Sixth Committee of the General Assembly, including through the establishment of a working group of the Sixth Committee. The view was expressed that such a working group could make a practical contribution to the consideration of this topic. It was also noted that a result-oriented discussion on the topic in the Special Committee would contribute to the work of the Sixth Committee. While recognizing the usefulness of the discussions relating to the application of sanctions in the Special Committee, several delegations also emphasized the need to pay attention to discussions in other forums, such as the informal working group of the Security Council on general issues on sanctions established pursuant to the note by the President of the Security Council of 17 April 2000 (S/2000/319).

18. Recalling that the mandate of the Special Committee was, inter alia, to commence a substantive discussion on all related reports of the Secretary-General, including the 1998 report containing a summary of the deliberations and main findings of the ad hoc expert group meeting on developing a methodology for assessing the consequences incurred by third States as a result of preventive or enforcement measures and on exploring innovative and practical measures of international assistance to affected third States (A/53/312, sect. IV), some delegations welcomed the work of the ad hoc expert group, whose recommendations and main findings, together with the views of States and international organizations as reflected in the reports of the Secretary-General, were considered valuable contributions to and good bases for the consideration of the issue. They regretted the fact that there had not yet been a systematic consideration of the report of the ad hoc expert group meeting more than five years after its publication.

19. Commenting on the recommendations and main findings of the ad hoc expert group meeting, the view was expressed that the recommendations were largely shared by the Secretary-General in his relevant reports. Moreover, it was remarked that similar recommendations had been made by the General Assembly in its resolutions, in particular Assembly resolution 56/87 of 12 December 2001, as well

as in the work of the informal working group of the Security Council on general issues of sanctions. Particular reference was made to, and support was expressed for, the need for pre-assessment and ongoing assessment reports on potential and actual unintended impact of sanctions on third States, the provision of technical assistance and the appointment of a special representative, as well as the dispatch of fact-finding and assessment missions to assess unintended negative consequences of sanctions.

20. Some delegations underlined the importance of the work of the informal working group of the Security Council and the need for early agreement on its work. It was reiterated that the Chairman's proposed outcome of the informal working group could be published as a Security Council document, even without the parts on which consensus has not yet been reached.

21. Several delegations also recalled some of the practical proposals made by the ad hoc expert group as well as by Member States that could assist in alleviating hardships encountered by third States as a result of sanctions. Such relief measures included commercial exemptions or concessions to the most affected third States, directly consulting with those States and giving priority to the contractors of the affected third States for investments in the targeted State. Other practical measures aimed at providing international assistance to third States included the setting up of a fund or a permanent consultative mechanism. Moreover, multi-channel financial arrangements or economic assistance could also be used to minimize the loss they incurred. It was also pointed out that third States affected by sanctions should be able to apply for compensation and to request that the sanctions regimes be applied with transparency and even-handedness.

22. The view was expressed that practical and timely assistance to third States affected by the application of sanctions would contribute to an effective and comprehensive response of the international community to sanctions imposed by the Security Council.

23. Some delegations, while recalling the impact of sanctions on civilian populations and on third States, reiterated the view that mandatory sanctions could be and have been an effective mechanism in the maintenance of international peace and security, and have been employed effectively against States, entities and groups of individuals that threaten international peace and security. In this respect, they welcomed the continuing recourse by the Security Council to targeted sanctions. Such recourse preserved the effectiveness of sanctions while minimizing their unintended negative consequences. They also welcomed as a salutary development the recognition by the Security Council that even targeted sanctions could entail unintended consequences, and the provision for humanitarian exemptions from such sanctions. They therefore encouraged the Security Council to continue working on making further refinements to the sanctions regimes to avoid any undesirable consequences.

24. Other delegations stressed that sanctions were a means that should be resorted to in accordance with Chapter VII of the Charter and principles of international law. It was emphasized that the imposition of sanctions should follow strict criteria, consistent with the Charter. In order to avoid sanctions from being counterproductive and having negative consequences, not only on the targeted States but also on third States, some delegations pointed out that they should be imposed

only after all means of peaceful settlement of disputes under the provisions of the Charter have been exhausted.

25. The concern was expressed that the imposition of sanctions had been resorted to with increased frequency in recent years, thus bring doubts as to their credibility, in particular when such sanctions were enforced through the use of force without Security Council authorization. The point was made that such an approach created a dangerous precedent in international relations, as did the unilateral imposition of sanctions by States.

26. The above point was made recalling that sanctions should not be used as a form of punishment. In this connection, it was stressed that the Security Council should act fairly and make a short- and long-term impact assessment before imposing sanctions. Some delegations stressed that such sanctions should be clearly defined, should be imposed within a specific time frame, in full keeping with the provisions of the Charter, and should be lifted as soon as the threat to international peace and security was removed or as soon as the State concerned had renounced its wrongful conduct and had implemented the resolutions of the Security Council.

27. The Special Committee welcomed the report of the Secretary-General summarizing the deliberations and main findings of the ad hoc expert group convened pursuant to General Assembly resolution 52/162 (A/53/312) and recommended that at its fifty-ninth session the Assembly should continue to consider, in an appropriate substantive manner and framework, the results of the ad hoc expert group meeting, taking into account the relevant debate in the Special Committee at its 2004 session, the views of States, the organizations of the United Nations system, the international financial institutions and other relevant organizations, as contained in the reports of the Secretary-General (A/54/383 and Add.1 and A/55/295 and Add.1), as well as the views of the Secretary-General regarding the deliberations and the main findings of the ad hoc expert group[19] and the relevant information to be submitted by the Secretary-General on the follow-up to the note by the President of the Security Council (S/1999/92).

28. The Assembly should address further the question of the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions under Chapter VII and the implementation of General Assembly resolutions 50/51 of 11 December 1995, 51/208 of 17 December 1996, 52/162 of 13 December 1997, 53/107 of 8 December 1998, 54/107 of 9 December 1999, 55/157 of 12 December 2000, 56/87 of 12 December 2001, 57/25 of 19 November 2002 and 58/80 of 9 December 2003, taking into account all reports of the Secretary-General on the subject, the text on the question of sanctions imposed by the United Nations contained in annex II to General Assembly resolution 51/242 of 15 September 1997, the forthcoming report of the informal working group of the Security Council on general issues related to sanctions, as well as the proposals presented and views expressed in the Special Committee.

B. Consideration of the revised working paper submitted by the Russian Federation entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures"

29. During the general exchange of views held at the 245th meeting of the Special Committee, the Russian Federation referred to its revised working paper, entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures" (A/AC.182/L.114/Rev.1). It observed that the revised working paper reflected many comments and proposals made by delegations at the previous sessions of the Special Committee. The sponsor delegation expressed the hope that the Special Committee would undertake a constructive consideration of the revised working paper and that it would conclude its work thereon during the current session. Furthermore, it expressed confidence that the adoption of the document by the General Assembly would provide useful assistance to the Security Council in discharging its functions in relation to the imposition and implementation of sanctions.

30. Support was expressed for the revised working paper and the point was made that it constituted a useful basis for consideration of the topic in the Special Committee. Several delegations stressed that sanctions were a means of dealing with threats to international peace and security and that they could not play a role in the settlement of international disputes. The view was expressed that sanctions were exceptional measures and should be resorted to only after all available peaceful means had been exhausted, in accordance with international law and the Charter of the United Nations.

31. The point was made that, prior to the imposition of sanctions, it was important to consider both their short-term and long-term consequences. In that regard, it was also observed that sanctions should not be seen as a punishment, that they should be clearly defined and provide for a specific time frame. In addition, sanctions should be removed as soon as the threat to international peace and security had been removed and once the target State had fully complied with the relevant Security Council resolutions. Support was expressed for the provision in the working paper concerning the non-permissibility of creating a situation in which the consequences of the introduction of sanctions would inflict considerable material and financial harm on third States. It was noted that the revised paper reflected the gist of the proposal submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.100/Rev.1) and also complemented the latter. The suggestion was made that the Special Committee should give further consideration to both the form and the content of the proposal.

32. At the 1st meeting of the Working Group, on 29 March 2004, the Russian Federation introduced its revised working paper (A/AC.182/L.114/Rev.1), which reads as follows:

"**Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures**

"*The General Assembly*,

"*Convinced* that the adoption of the Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures will contribute towards strengthening the role of the United Nations and enhancing its effectiveness in maintaining international peace and security,

"*Considering* the need to ensure a wide dissemination of the text of the Declaration,

"1. *Approves* the Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures, the text of which is annexed to the present resolution;

"2. *Expresses its appreciation* to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization for its important contribution to the elaboration of the text of the Declaration;

"3. *Requests* the Secretary-General to inform the Governments of the States Members of the United Nations, members of specialized agencies, and the Security Council of the adoption of the Declaration;

"4. *Urges* that every effort be made to ensure that the Declaration becomes generally known and is fully implemented.

"**Annex**

"**Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures**

"*The General Assembly*,

"*Guided* by the purposes and principles of the Charter of the United Nations,

"*Recalling* that the peoples of the United Nations are determined to practice tolerance and live together in peace with one another as good neighbours,

"*Bearing in mind* the right of all States to use peaceful means of their own choice for the prevention and removal of disputes or situations which may threaten international peace and security,

"*Reaffirming* the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field, the Declaration on Fact-Finding by the United Nations in the Field of the Maintenance of International Peace and Security and the Declaration on the Enhancement of Cooperation between the United Nations and Regional

Arrangements or Agencies in the Maintenance of International Peace and Security,

"*Referring also* to the United Nations Millennium Declaration of 8 September 2000, which expresses the resolve to minimize the adverse effects of United Nations economic sanctions on innocent populations, to subject such sanctions regimes to regular reviews and to eliminate the adverse effects of sanctions on third parties,

"*Recalling* the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State,

"*Calling upon* States to cooperate fully with the relevant organs of the United Nations and to support action undertaken by them in accordance with the Charter to maintain or restore international peace and security,

"*Bearing in mind* the obligation of States to conduct their relations with other States in accordance with the principles of international law and the purposes and principles of the United Nations,

"*Noting* the growing demands of the international community to consider ways of reducing the destructive effects of sanctions both for target States and for third States, while ensuring their effectiveness,

"*Convinced* that special attention should be paid to the humanitarian aspects of sanctions, so as to minimize the adverse effect of sanctions, particularly with regard to the most vulnerable groups of the civilian population, above all children, women and the elderly,

"*Considering* that sanctions should not lead to destabilization of the economy either in the target State or in third States,

"*Considering also* that the determination of the criteria and conditions for the introduction of sanctions in accordance with the Charter of the United Nations and the principles of international law and justice would help eliminate or minimize their negative effects,

"*Stressing* that sanctions are an extreme measure, which should be adopted only when other relevant peaceful means have been exhausted and only when the Security Council determines the existence of a threat to the peace, breach of the peace or act of aggression,

"*Recalling* that the Charter confers on the Security Council primary responsibility for the maintenance of international peace and security and that States have agreed, in accordance with the Charter, to accept and carry out its decisions,

"*Also recalling* the important role of the General Assembly, the Economic and Social Council and the Secretary-General in the maintenance of international peace and security, conferred on them by the Charter,

"I. *Approves the following provisions and principles*:

"1. The application of sanctions is an extreme measure and is permitted only after all peaceful means of settling the dispute or conflict and of maintaining or restoring international peace and security, including the

provisional measures provided for in Article 40 of the Charter of the United Nations, have been exhausted.

"2. Sanctions must be introduced in strict conformity with the provisions of the Charter of the United Nations and the rules of international law, pursue clear and precise objectives, have a time frame, be subject to regular review, taking into account the views of the target State, where appropriate, and provide for clearly stipulated conditions for lifting them, and the lifting of them must not be linked to the situation in neighbouring and other third countries.

"3. Under the system of collective security established by the Charter of the United Nations, sanctions are an important instrument for the resolution of conflicts and the maintenance of international peace and security.

"4. Before the introduction of sanctions, the target State or party must, as a rule, be given unambiguous notice.

"5. The use of sanctions for the purpose of overthrowing or changing the legal authorities in the target country is not permissible. At the same time, in order to modify the behaviour of the relevant parties and to ensure the implementation of Security Council resolutions, targeted sanctions, including financial sanctions, arms embargoes or travel bans, may be introduced through a decision by the Security Council in respect of specific persons or political elites who are responsible for international aggression, flagrant human rights violations or other condemnable actions.

"6. The purpose of sanctions is to modify the behaviour of the target party that is threatening international peace and security, not to punish or otherwise exact retribution.

"7. The creation of a situation in which the consequences of the introduction of sanctions would inflict considerable material and financial harm on third States or in which an innocent civilian population or neighbouring countries would experience adverse consequences of international coercive measures is not permissible. The Secretariat must make an objective assessment of the consequences of sanctions for the target State and for third States, as far as possible, prior to their introduction in respect of the target State.

"8. No additional conditions should be imposed for cessation or suspension of sanctions except as a result of newly discovered circumstances and except where explicitly provided for in Security Council decisions.

"9. Objective assessment of the short-term and long-term socio-economic and humanitarian consequences of sanctions is necessary both at the stage of their preparation and in the course of their implementation.

"10. The Secretariat must provide the Security Council and the sanctions committees, at their request, with an assessment of the humanitarian and socio-economic impact of sanctions.

"11. Sanctions regimes must ensure that appropriate conditions are created for allowing an adequate supply of humanitarian goods to reach the civilian population. Foodstuffs, medicines and medical supplies should be

exempted from United Nations sanctions regimes. Basic or standard medical and agricultural equipment and basic or standard educational items should also be exempted; a list should be drawn up for that purpose. Other essential humanitarian goods should be considered for exemption by the relevant United Nations bodies, including the sanctions committees. In this regard, efforts should be made to allow target countries to have access to appropriate resources and procedures for financing humanitarian imports.

"12. Following the introduction of sanctions, the Secretariat should be requested to provide assistance in monitoring their effects for third countries which have suffered or may suffer as a result of their implementation, so that the Security Council and its sanctions committees may receive timely information and early estimates in this respect and, while maintaining the effectiveness of the sanctions regime, may make the necessary corrections or partial changes to its implementation or to the regime itself in order to mitigate the negative impact of the sanctions on third countries.

"13. When the Security Council considers issues relating to sanctions, account must be taken of humanitarian considerations, which are equally pressing in time of peace and in time of armed conflict.

"14. Decisions on sanctions must not create situations in which fundamental human rights not subject to suspension even in an emergency situation would be violated, above all the right to life, the right to freedom from hunger and the right to effective health care and medical services for all.

"15. The adoption of decisions and the implementation of sanctions should not create situations which would cause unnecessary suffering to the civilian population, especially its most vulnerable sectors. Sanctions regimes must correspond to the provisions of international humanitarian law and international human rights norms.

"16. Sanctions may not be open-ended and should be subject to periodic review and adjustment, taking into account the humanitarian situation and depending on the fulfilment by the target State of the requirements of the Security Council. Time limits must, as a rule, be established for sanctions regimes; such time limits may be extended only on the decision of the Security Council.

"17. Sanctions should be suspended in emergency situations and cases of force majeure (natural disasters, threat of famine, mass disturbances resulting in the disorganization of the country's Government) in order to prevent a humanitarian disaster. A decision on this must be taken in each specific case.

"18. Impermissibility of additional measures likely to cause a serious deterioration in the situation of the civilian population and breakdown of the infrastructure of the target State.

"19. Ensuring unimpeded and non-discriminatory access of the population of target countries to humanitarian assistance.

"20. Consideration of the views of international humanitarian organizations whose mandates have been generally recognized in drawing up and implementing sanctions regimes. Exclusion of international humanitarian

organizations from the effect of sanctions limitations with a view to facilitating their work in countries which are the object of sanctions.

"21. Utmost simplification of the regime established for delivery of humanitarian supplies required for the sustenance of the population, and exclusion of medical supplies and staple food items from the scope of the sanctions regime. Basic or standard medical and agricultural equipment, basic or standard educational items, and basic items for hygiene, sewage and sanitation equipment, emergency vehicles and other vehicles, along with fuel and lubricants, should also be exempted.

"22. Strict observance of the principles of neutrality, independence, transparency, impartiality and the impermissibility of any form of discrimination in the provision of humanitarian and medical assistance and other forms of humanitarian support for all sectors and groups of the population. A condition of providing such assistance should be the prior clearly expressed consent of the recipient State or a request on its part.

"23. All information on the humanitarian consequences of the introduction and implementation of sanctions, including those which have a bearing on the basic living conditions of the civilian population of the target State and on its socio-economic development, must be objective and transparent, and must be considered by the Security Council and its sanctions committees, with a view to the modification of the sanctions regime and, ultimately, to the full or partial lifting of the sanctions.

"24. The target State should exert all possible efforts to facilitate the equitable and unimpeded distribution of humanitarian assistance. Armed convoys may not be used to distribute humanitarian assistance, unless there is a decision to that effect by the Security Council.

"25. It is of paramount importance, in introducing and implementing sanctions, to observe the humanitarian aspects of sanctions to ensure that they will contribute to the maintenance of international peace and security and that they will be legitimate from the standpoint of the Charter of the United Nations and the rules of international law and justice.

"II. *Declares* that nothing in the present Declaration shall be construed as prejudicing in any manner the provisions of the Charter, including those contained in Article 2, paragraph 7 thereof, the rights and duties of States, or the scope of the functions and the powers of United Nations organs under the Charter, in particular, those relating to the maintenance of international peace and security."

33. In its introductory remarks, the sponsor delegation reiterated that the revised text reflected many of the comments and suggestions made by delegations at the previous sessions of the Committee. It also highlighted the importance of the topic of sanctions to the entire international community and called upon delegations to demonstrate flexibility in the review of the document.

34. Several delegations thanked the sponsor delegation for its contribution to the work of the Committee and expressed, in general terms, their full support for the revised proposal. The view was also voiced that the proposal had been on the Committee's agenda for the past five sessions and that with a sufficient political will, it could be finalized and adopted at the current session.

35. A delegation referred to the revised working paper on the strengthening of certain principles concerning the impact and application of sanctions reproduced in paragraph 89 of the 2002 report of the Special Committee (A/AC.182/L.110/Rev.1).[7] It noted that the draft declaration proposed by the Russian Federation covered three of the four principles identified in the Libyan proposal. It expressed the view that by approving the draft declaration, the Committee would indirectly endorse the aforementioned three principles in the revised working paper by the Libyan Arab Jamahiriya. It also noted that the draft declaration did not address the issue of compensation to a target State for any unlawful damage done by sanctions.

36. It was reiterated that the relationship of the proposed declaration to the provisions of annex II to General Assembly resolution 51/242, dealing with the question of sanctions imposed by the United Nations, remained unclear and that, therefore, it should be explained whether the former document was intended to substitute or complement the latter. In that regard, it was pointed out that the views on the subject expressed in paragraphs 41, 44, 47, 48, 52, 55 and 59 to 61 of the Committee's 2003 report[20] remained relevant. By way of a general remark, it was reiterated that sanctions should not be regarded as one of the means of settlement of disputes under Chapter VI of the Charter but rather as a tool aimed at modifying the behaviour of a target party.

37. At the 3rd meeting of the Working Group on 30 March, a number of delegations reiterated their reservations regarding the discussion of the working paper within the Special Committee. While characterizing the issues under discussion as important, they were not convinced that the proposed revised working paper, although containing many acceptable points, was the most appropriate form in which to deal with the issues. They urged the sponsor delegation to reconsider its approach to the matter in the light of this concern. Concern was also voiced about the extremely detailed approach used in the proposed document in trying to examine all of the ramifications of sanctions. In this connection, the elasticity of the Charter itself, which, inter alia, enabled the Organization to create peacekeeping operations and to deal with almost any situation that threatened international peace and security, was recalled. A document anticipating every possible aspect of sanctions could be expected to encounter serious problems.

38. The sponsor delegation acknowledged that there might be various views and approaches about individual details in the proposal and expressed the view that the Special Committee was the appropriate subsidiary organ to elaborate a draft declaration for approval by the General Assembly. It also reiterated its appeal to delegations to demonstrate flexibility so that the proposed document could be finalized at the current session.

39. The Working Group conducted the reading of the revised working paper submitted by the Russian Federation in the course of its 1st, 2nd and 3rd meetings, beginning with the review, paragraph-by-paragraph, of the annex thereof.

Draft declaration

40. The sponsor delegation informed the Working Group of the editorial changes and specific amendments it had made to the title and preambular paragraphs of the draft declaration.

Title and first to fifth preambular paragraphs

41. No specific comments were made relating to the title and the first to fifth paragraphs of the draft declaration.

Sixth preambular paragraph

42. The view was expressed that the paragraph should be expanded to include a reference to General Assembly resolutions on the inadmissibility of intervention and interference in the internal affairs of States as well as a reference to paragraph 7 of Article 2 of the Charter. It was also suggested that the paragraph be redrafted to follow more closely the obligations set out in paragraph 4 of Article 2 of the Charter. The sponsor delegation expressed its receptiveness to the suggestion.

Seventh to eleventh preambular paragraphs

43. No specific comments were made relating to the paragraphs.

Twelfth and thirteenth preambular paragraphs

44. Some delegations observed that the twelfth and thirteenth preambular paragraphs appeared to mirror operative paragraphs 1 and 2 of section I. It was questioned whether they reflected the thrust of the corresponding provisions of the Charter. The view was also expressed that the exhaustion of the relevant peaceful means suggested by the paragraph should not be a condition precedent for the introduction of sanctions and, the language of the thirteenth paragraph should, therefore, be adjusted accordingly.

Fourteenth and fifteenth preambular paragraphs

45. No specific comments were made relating to the paragraphs.

46. In summing up the debate on the preamble, the Chairman noted that the sixth, twelfth and thirteenth paragraphs, in particular, still required further attention, and he invited the sponsor to consult with the concerned delegations. The Working Group then proceeded to a paragraph-by-paragraph reading of sections I and II of the draft Declaration.

Section I

47. The sponsor delegation informed the Working Group of the editorial changes and specific amendments it had made in the opening words and paragraphs 1 to 3, 5 to 8, 10, 14 to 17, 23 and 25.

Opening words

48. A preference was expressed for the original opening phrase "*Solemnly proclaims*", rather than the currently proposed words "*Approves the following provisions and principles*". The sponsor suggested that the opening words could be modified to read: "*Approves the following declaration*".

Paragraph 1

49. Some delegations expressed concern regarding the notion that the application of sanctions "is permitted only after all peaceful means of settling the dispute or

conflict ... have been exhausted". Furthermore, it was observed that the notion of exhaustion could not apply to the provisional measures referred to in Article 40 of the Charter. It was pointed out that sanctions were not to be regarded as means of settlement of disputes provided for in Chapter VI. To require that, before sanctions could be imposed, means of peaceful settlement of the disputes or conflict underlying the application of Chapter VII had to be exhausted was not only without a basis in the Charter, but could also, in practice, unduly restrict the functions of the Security Council acting under Chapter VII and could be interpreted to mean that every existing means of peaceful settlement of disputes, such as negotiation, mediation, arbitration or conciliation, had to be applied before sanctions were imposed. It was reiterated that the main objective of sanctions should be modifying the behaviour of a target party. Accordingly, it was suggested that the paragraph should be redrafted so as to be consistent with the pertinent provisions of Articles 24, 39, 41 and 42 of the Charter. In terms of a drafting modification, a proposal was made that the words "if they are considered necessary or useful" be incorporated in the text after the word "including".

Paragraph 2

50. The Working Group was reminded that the views concerning the discrepancy between the paragraph and annex II to General Assembly resolution 51/242 had been reflected in paragraphs 47 and 48 of the Committee's report for 2003.[20] Concern was also expressed that the paragraph did not seem to take into account all the kinds of sanctions that might be appropriate in different situations. It was noted that the phrase "the lifting of [sanctions] must not be linked to the situation in neighbouring and other third countries" appeared too broad.

Paragraph 3

51. The view was expressed that the paragraph was superfluous and could be deleted in its entirety because its gist was covered by paragraphs 1 and 2. Conversely, it was observed that the paragraph was useful. Furthermore, it was suggested that a minor modification could be made by deleting the word "important" so that the relevant part of the phrase would read: "sanctions are an instrument". The view was also reiterated that sanctions should be regarded as an instrument for the maintenance of international peace and security and not as a means of prevention or settlement of disputes.

Paragraph 4

52. No comments were made relating to the paragraph.

Paragraph 5

53. It was pointed out that the observations critical of this paragraph contained in paragraph 79 of the Committee's report of 2000 and paragraph 56 of the Committee's report of 2003 remained valid. On the other hand, while supporting the essence of the paragraph, the suggestion was made that the specific examples of sanctions such as "financial sanctions, arms embargoes or travel bans" could be deleted from the text. Furthermore, the view was expressed that the latter part of the paragraph could be amended by suppressing the words "in respect of specific persons or political elites who are responsible for international aggression, flagrant

human rights violations or other condemnable actions". The sponsor delegation indicated its receptiveness to the suggestion to remove those examples of sanctions.

Paragraph 6

54. No comments were made relating to the paragraph.

Paragraph 7

55. The view was expressed that the provision concerning the impermissibility of introducing sanctions that would inflict financial harm on third States was inconsistent with Article 50 of the Charter. It was also suggested that the notion that the Secretariat would play a central role in making assessments of possible effects of sanctions should not be expressed in the text in such categorical terms as currently drafted. While the Security Council could from time to time take advantage of the expertise of the Secretariat on the matter, the Charter did not foresee a major and active role for the Secretariat in the imposition of measures under Chapter VII of the Charter. The point was made that the problematic provisions in the paragraph illustrated a larger difficulty with the proposal as a whole. In terms of a drafting modification, proposals were made that the reference to the "targeted countries" be included after the words "or neighbouring countries" and that the words "within the limits of its capacity" be added at the end of the paragraph.

Paragraph 8

56. No comments were made relating to the paragraph.

Paragraph 9

57. The feasibility of objective assessments of the short-term and long-term socio-economic and humanitarian consequences of sanctions before their imposition was questioned. The assessments should rather take place after sanctions had been applied. The sponsor observed that the recent practice of the sanctions committees indicated that such assessments had been requested before the imposition of sanctions by the Security Council. The proposed language covered the possibility of the assessments before and after the imposition of sanctions.

Paragraphs 10 to 13

58. No comments were made relating to the paragraphs.

Paragraph 14

59. Concern was expressed over the provisions attempting to describe various situations as violations of fundamental human rights. The point was made that both the Third Committee of the General Assembly and the Economic and Social Council had endeavoured to define what constituted fundamental human rights and, thus, it was inappropriate for the Special Committee to deal with the matter in this document.

Paragraph 15

60. It was pointed out that the observation found in paragraph 85 of the 2003 report of the Committee remained relevant.

Paragraph 16

61. The suggestion was made that, in the first sentence of the paragraph, the words "with a view to lifting them or not", be inserted after the word "adjustment", so that the relevant part of the sentence would read: "... subject to periodic review and adjustment, with a view to lifting them or not, taking into account ...".

Paragraphs 17 to 23

62. No comments were made relating to these paragraphs.

Paragraph 24

63. The proposal was made to replace the words "exert all possible efforts" with the words "cooperate without condition", so that the relevant part of the sentence would read: "The target State should cooperate without condition to facilitate ...".

Paragraph 25

64. No comments were made relating to the paragraph.

Section II

65. No comments were made relating to section II.

Draft General Assembly resolution

66. The sponsor delegation noted that the text of the draft resolution had taken into account numerous comments and proposals made by delegations during the previous sessions and that it was similar to many other relevant General Assembly resolutions.

67. The view was expressed that the omission of the reference in the first preambular paragraph to General Assembly resolutions 51/241 and 51/242 was regrettable. The point was also made that it would be premature to continue the discussion on the draft resolution prior to resolving issues relating to both the substance and the form of the document.

68. The sponsor observed that the differences among delegations with regard to certain provisions of the draft declaration were minor and suggested that they could be solved during the current session.

69. At its 3rd meeting, the Working Group concluded the reading of the revised working paper submitted by the Russian Federation.

70. At the 6th meeting, on 2 April 2004, the Russian Federation informed the Working Group of the outcome of the informal consultations on the revised working paper coordinated by it. On 5 April, the sponsor delegation submitted a new version of the working paper for consideration at the 2005 session of the Special Committee, which reads as follows:[21]

"**Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures**

"*The General Assembly*,

"*Convinced* that the adoption of the Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures will contribute towards strengthening the role of the United Nations and enhancing its effectiveness in maintaining international peace and security,

"*Considering* the need to ensure a wide dissemination of the text of the Declaration,

"1. *Approves* the Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures, the text of which is annexed to the present resolution;

"2. *Expresses its appreciation* to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization for its important contribution to the elaboration of the text of the Declaration;

"3. *Requests* the Secretary-General to inform the Governments of the States Members of the United Nations, members of specialized agencies, and the Security Council of the adoption of the Declaration;

"4. *Urges* that every effort be made to ensure that the Declaration becomes generally known and is fully implemented.

"Annex

"Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures

"*The General Assembly*,

"*Guided* by the purposes and principles of the Charter of the United Nations,

"*Recalling* that the peoples of the United Nations are determined to practice tolerance and live together in peace with one another as good neighbours,

"*Bearing in mind* the right of all States to use peaceful means of their own choice for the prevention and removal of disputes or situations which may threaten international peace and security,

"*Reaffirming* the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field, the Declaration on Fact-Finding by the United Nations in the Field of the Maintenance of International Peace and Security and the Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security,

"*Referring also* to the United Nations Millennium Declaration of 8 September 2000, which expresses the resolve to minimize the adverse effects of United Nations economic sanctions on innocent populations, to subject such sanctions regimes to regular reviews and to eliminate the adverse effects of sanctions on third parties,

"*Recalling* the duty of States to refrain in their international relations from **the threat or use of force** against the **territorial integrity or** political independence or territorial integrity of any State, **or in any other manner inconsistent with the purposes of the United Nations,**

"*Calling upon* States to cooperate fully with the relevant organs of the United Nations and to support action undertaken by them in accordance with the Charter to maintain or restore international peace and security,

"*Bearing in mind* the obligation of States to conduct their relations with other States in accordance with the principles of international law and the purposes and principles of the United Nations,

"*Noting* the growing demands of the international community to consider ways of reducing the destructive effects of sanctions both for target States and for third States, while ensuring their effectiveness,

"*Convinced* that special attention should be paid to the humanitarian aspects of sanctions, so as to minimize the adverse effect of sanctions, particularly with regard to the most vulnerable groups of the civilian population, above all children, women and the elderly,

"*Considering* that sanctions should not lead to destabilization of the economy either in the target State or in third States,

"*Considering also* that the determination of the criteria and conditions for the introduction of sanctions in accordance with the Charter of the United Nations and the principles of international law would help eliminate or minimize their negative **side** effects,

"*Stressing* that sanctions are an extreme measure, which should be adopted only when the Security Council determines the existence of a threat to the peace, breach of the peace or act of aggression,

"*Recalling* that the Charter confers on the Security Council primary responsibility for the maintenance of international peace and security and that States have agreed, in accordance with the Charter, to accept and carry out its decisions,

"*Also recalling* the important role of the General Assembly, the Economic and Social Council and the Secretary-General in the maintenance of international peace and security, conferred on them by the Charter,

"1. *Approves the following* ***Declaration***:

"1. The application of sanctions is an extreme measure **that should be resorted to when other relevant peaceful options are inadequate and only when the Security Council determines the existence of a threat to the peace, breach of the peace, or act of aggression**.

"2. Sanctions **should** be introduced in strict conformity with the provisions of the Charter of the United Nations and the rules of international law, pursue clear and precise objectives, have a time frame, be subject to regular review, taking into account the views of the target State, where appropriate, and provide for clearly stipulated conditions for lifting them.

"3. Before the introduction of sanctions, the target State or party must, as a rule, be given unambiguous notice.

"4. **The overthrowing or changing of the legal authorities in the target country must not be the purpose of sanctions. Given this fact, targeted sanctions are preferable in order to modify the behaviour of the relevant parties and to ensure the implementation of Security Council resolutions.**

"5. The purpose of sanctions is to modify the behaviour of the target **State**, not to punish or otherwise exact retribution.

"6. The creation of a situation in which the consequences of the introduction of sanctions would inflict considerable material and financial harm on **the target State**, third States or in which **the** civilian population would experience adverse consequences of coercive measures is not permissible. **As far as possible, a prior assessment** of the consequences of sanctions for the target State and for third States **must** be **made**.

"7. No additional conditions should be imposed for cessation or suspension of sanctions except as a result of newly discovered circumstances and except where explicitly provided for in Security Council decisions.

"8. Objective assessment of the short-term and long-term socio-economic and humanitarian consequences of sanctions is necessary both at the stage of their preparation and in the course of their implementation.

"9. The Secretariat must provide the Security Council and the sanctions committees, at their request, with an assessment of the humanitarian and socio-economic impact of sanctions.

"10. Sanctions regimes must ensure that appropriate conditions are created for allowing an adequate supply of humanitarian goods to reach the civilian population. Foodstuffs, medicines and medical supplies should be exempted from United Nations sanctions regimes. Basic or standard medical and agricultural equipment and basic or standard educational items should also be exempted; a list should be drawn up for that purpose. Other essential humanitarian goods should be considered for exemption by the relevant United Nations bodies, including the sanctions committees. In this regard, efforts should be made to allow target countries to have access to appropriate resources and procedures for financing humanitarian imports.

"11. Following the introduction of sanctions, the Secretariat should be requested to provide assistance in monitoring their effects for third countries which have suffered or may suffer as a result of their implementation, so that the Security Council and its sanctions committees may receive timely information and early estimates in this respect and, while maintaining the effectiveness of the sanctions regime, may make the necessary corrections or

partial changes to its implementation or to the regime itself in order to mitigate the negative impact of the sanctions on third countries.

"12. When the Security Council considers issues relating to sanctions, account must be taken of humanitarian considerations, which are equally pressing in time of peace and in time of armed conflict.

"13. Decisions on sanctions must not create situations in which fundamental human rights would be violated.

"14. The adoption of decisions and the implementation of sanctions should not create situations which would cause unnecessary suffering to the civilian population, especially its most vulnerable sectors. Sanctions regimes must correspond to the provisions of international humanitarian law and international human rights norms.

"15. Sanctions may not be open-ended and should be subject to periodic review **with a view to lifting them or not, or to adjusting them**, taking into account the humanitarian situation and depending on the fulfilment by the target State of the requirements of the Security Council. Time limits must, as a rule, be established for sanctions regimes; such time limits may be extended only on the decision of the Security Council.

"16. Sanctions should be suspended in emergency situations and cases of force majeure (natural disasters, threat of famine, mass disturbances resulting in the disorganization of the country's Government) in order to prevent a humanitarian disaster. A decision on this must be taken in each specific case.

"17. Impermissibility of additional measures likely to cause a serious deterioration in the situation of the civilian population and breakdown of the infrastructure of the target State.

"18. Ensuring unimpeded and non-discriminatory access of the population of target countries to humanitarian assistance.

"19. Consideration of the views of international humanitarian organizations whose mandates have been generally recognized in drawing up and implementing sanctions regimes. Exclusion of international humanitarian organizations from the effect of sanctions limitations with a view to facilitating their work in countries which are the object of sanctions.

"20. Utmost simplification of the regime established for delivery of humanitarian supplies required for the sustenance of the population, and exclusion of medical supplies and staple food items from the scope of the sanctions regime. Basic or standard medical and agricultural equipment, basic or standard educational items, and basic items for hygiene, sewage and sanitation equipment, emergency vehicles and other vehicles, along with fuel and lubricants, should also be exempted.

"21. Strict observance of the principles of neutrality, independence, transparency, impartiality and the impermissibility of any form of discrimination in the provision of humanitarian and medical assistance and other forms of humanitarian support for all sectors and groups of the population. A condition of providing such assistance should be the prior clearly expressed consent of the recipient State or a request on its part.

"22. All information on the humanitarian consequences of the introduction and implementation of sanctions, including those which have a bearing on the basic living conditions of the civilian population of the target State and on its socio-economic development, must be objective and transparent, and should be considered by the Security Council and its sanctions committees, with a view to the modification of the sanctions regime and, ultimately, to the full or partial lifting of the sanctions.

"23. The target State should **cooperate without any condition** to facilitate the equitable and unimpeded distribution of humanitarian assistance. Armed convoys may not be used to distribute humanitarian assistance, unless there is a decision to that effect by the Security Council.

"24. It is of paramount importance, in introducing and implementing sanctions, to observe the humanitarian aspects of sanctions to ensure that they will contribute to the maintenance of international peace and security and that they will be legitimate from the standpoint of the Charter of the United Nations and the rules of international law and justice.

"II. *Declares* that nothing in the present Declaration shall be construed as prejudicing in any manner the provisions of the Charter, including those contained in Article 2, paragraph 7, thereof, the rights and duties of States, or the scope of the functions and the powers of United Nations organs under the Charter, in particular, those relating to the maintenance of international peace and security."

C. Revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions

71. The Special Committee considered the revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110/Rev.1), contained in paragraph 89 of the report of the Special Committee for 2002,[7] in the general exchange of views held at the 245th meeting, on 29 March 2004, as well as during the 3rd meeting of the Working Group of the Whole, on 30 March.

72. During the general exchange of views, some delegations expressed support for the revised working paper. In the Working Group discussions, the sponsor delegation recalled that the proposal had initially been considered in the context of Sixth Committee consultations on the draft resolution on the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions at the fifty-fifth session of the General Assembly.[22] The proposal was subsequently discussed during the 2001 and 2002 sessions of the Special Committee.[23] Since the proposal had benefited from a section-by-section consideration during the 2003 session,[24] it was not necessary to proceed in a similar manner during the current session.

73. The sponsor delegation observed that the revised working paper submitted by the Russian Federation entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures" (see sect. B above) already covered two of the three principles in its working paper, namely: (a) that sanctions and coercive measures constitute

exceptional action, in the sense that such action is a last resort and must only be imposed within the narrowest bounds and after all peaceful means have been exhausted; and (b) that the imposition of sanctions must not place upon the targeted State financial, economic or humanitarian burdens that are additional to and other than those resulting from the direct application of the sanctions to the extent necessary to achieve their objective.[25] The two principles should therefore be viewed in the light of the revised working paper of the Russian Federation. The sponsor delegation indicated that if agreement was reached on the relevant parts of that revised working paper, it would not press for further consideration of the two above-mentioned principles of its proposal.

74. On the other hand, the sponsor delegation noted that the third principle, namely, that the targeted State has a right to seek and obtain just compensation for any unlawful damage done to it by sanctions imposed without good grounds or in a way that exceeds requirements and is incompatible with the notion of proportionality with the achievement of their objective, was a distinct element and was not reflected in the revised working paper of the Russian Federation. This principle deserved further discussion in the Committee, considering also that it bears some relation to the topic "Responsibility of international organizations", on the current programme of work of the International Law Commission. The sponsor delegation conceded that the question was not any easy one and did not lend itself to ready answers or solutions. Discussions in the Committee could assist the International Law Commission to have a better appreciation of the views of States on the matter.

75. While the sponsor delegation encouraged delegations to lend support to the parts of the working paper of the Russian Federation that were similar to its proposal, it stressed that its suggestions should not be interpreted as the withdrawal of its proposal, which retained its importance.

D. Consideration of the working paper submitted by the Russian Federation entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations"

76. During the general exchange of views held at the 245th meeting of the Special Committee, the sponsor delegation, the Russian Federation, referred to the working paper entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" (A/AC.182/L.89/Add.2 and Corr.1),[26] which it had submitted to the Special Committee at its 1998 session. The sponsor delegation reiterated that the aim of the proposal was to improve United Nations peacekeeping operations, taking into account the problems encountered by the Organization in that field. It was suggested that the Special Committee, following its consideration and finalization of that document, might consider transmitting it to the Special Committee on Peacekeeping Operations as a "legal manual".

77. A view was expressed in support of the consideration of the proposal, based on an overall review of the extensive practice of the United Nations in that area, which would assist in drawing useful lessons from that practice. The point was made that the Special Committee should not be precluded from considering peacekeeping by

the discussions on the issue by other bodies of the Organization. Some other delegations reiterated that the Special Committee should avoid duplicating the work on peacekeeping carried out by other more specialized bodies of the United Nations, such as the Special Committee on Peacekeeping Operations.

78. At the 4th meeting of the Working Group, the sponsor delegation emphasized the importance of elaborating a legal framework for peacekeeping operations in the context of Chapter VI of the Charter. In that context, it recalled the historical evolution of peacekeeping operations and highlighted some recent developments in that field, such as the increased deployment of peacekeeping troops by regional and subregional entities, the use of peacekeepers in intra-state disputes, as well as their use for electoral assistance and policing. It was noted that those developments entailed a wide range of important legal issues, which could be addressed by the Special Committee. A formulation of the relevant basic principles and criteria, based on the vast practice of the Organization, could serve as a guide for the establishment of future peacekeeping operations. In that regard, the sponsor delegation highlighted some key elements of the legal framework for peacekeeping, such as its purpose and legal basis, its components and its command structure, as well as applicable basic principles, such as non-interference in the internal affairs of the States parties to the conflict, consent of the parties and of the transit States, neutrality and impartiality, and non-use of force except in self-defence. Other issues to be addressed included: the definition of the mandate of peacekeeping operations; legal elements relating to the conduct of peacekeeping, including conditions for the contribution of national contingents and the rights and obligations of transit and receiving States; the establishment of limits to peacekeepers' right to self-defence while strengthening their protection; the safety and welfare of the personnel of the operation; humanitarian and electoral assistance provided by peacekeepers; and the responsibility of the Organization and States participating in such operations, including questions of liability.

79. While the sponsor delegation acknowledged that the practical issues of peacekeeping were discussed in other United Nations bodies, such as the Special Committee on Peacekeeping Operations, it stressed that the Special Committee should not be precluded from dealing with the legal aspects of peacekeeping operations. Owing to the multifaceted nature of peacekeeping, it would be possible to avoid duplication in the work carried out by different bodies of the Organization. The sponsor delegation noted that although the principles of peacekeeping had been repeatedly referred to in the Special Committee on Peacekeeping Operations, no relevant document had yet been adopted by the General Assembly. In that regard, it was suggested that the working paper could be referred to the Special Committee on Peacekeeping Operations for consideration and that the possibility of cooperation between the two Committees should be explored, so that a joint document, possibly in the form of a declaration, could be prepared.

80. In response to the suggestions of the sponsor delegation with regard to the possible collaboration between the two Committees, the Chairman pointed out that the Special Committee had no mandate for referring proposals to another Committee and that there was no practical need for such a referral. The proposal was reflected in the report of the Special Committee, which was available to all the bodies of the Organization.

E. Consideration of the working papers submitted by Cuba at the 1997 and 1998 sessions of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness"

81. During the general exchange of views at the 245th meeting of the Special Committee, held on 29 March 2004, several delegations expressed their support for the working papers submitted by Cuba (A/AC.182/L.93 and Add.1). The point was made that, within the process of enhancing the role of the United Nations, strengthening the role of the General Assembly in the area of maintaining international peace and security was of outmost importance. It was observed that it was essential to revitalize the General Assembly as the main legislative and representative organ of the Organization, with a view to ensuring that it could fully carry out the tasks entrusted to it under the Charter. In this regard, the view was expressed that the General Assembly should be able to review Security Council resolutions having an impact upon international peace and security and adopt appropriate recommendations thereon. It was also observed that the Security Council had to be reformed in order to ensure the equitable representation of developing countries and to increase its transparency. Conversely, the view was expressed that redistributing the powers in the area of international peace and security between the organs of the Organization or limiting the prerogatives of the Security Council in this field was not appropriate.

82. At the 7th meeting of the Working Group of the Whole, on 5 April, the sponsor delegation emphasized that the gist of its revised working paper, contained in document A/AC.182/L.93/Add.1, aimed at analysing the powers and functions of the General Assembly and the Security Council in the area of the maintenance of international peace and security. It was noted that the revised working paper stressed the broad role of the General Assembly in maintaining international peace and security and that such a role was clearly and precisely provided for in the Charter. The sponsor delegation expressed the view that, notwithstanding the work of other bodies within the Organization, the Special Committee should, in accordance with its mandate, continue to examine ways and means to revitalize the General Assembly in order to enhance its role, reaffirmed in the Millennium Declaration,[27] as the main deliberative, policy-making and representative organ of the United Nations. It was essential to ensure that the General Assembly fully discharged its powers and functions as provided for in the Charter.

83. The sponsor delegation characterized its document as fully within the mandate and competence of the Special Committee. It observed that the proposal remained valid, particularly in the light of General Assembly resolution 58/126 of 19 December 2003 on the revitalization of the Assembly's work. Furthermore, the sponsor delegation made a point that its proposal contained all the basic criteria for the revision of the procedures and practices of the General Assembly and other organs of the United Nations in the area of the maintenance of international peace and security. In the sponsor's view, a discussion on its proposal would be beneficial to the enhancement of the authority and efficiency of the United Nations and its principal organs.

F. Consideration of the revised proposal submitted by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security

84. During the general exchange of views at the 245th meeting of the Special Committee, held on 29 March 2004, the sponsor delegation emphasized the importance of its proposal (A/AC.182/L.99) in relation to the efforts to strengthen the role of the Organization, in particular the General Assembly and the Security Council, in the area of maintenance of international peace and security.

85. Some delegates expressed their support for the proposal and considered that it would assist in rendering the General Assembly and the Security Council more efficient and democratic. In this regard, the point was made that the Security Council should be reformed in order to make it more representative and transparent.

86. At the 7th meeting of the Working Group of the Whole, on 5 April, the sponsor delegation mentioned that its working paper contained 7 points relating to the role of the Security Council and the General Assembly in the area of the maintenance of international peace and security. Since the Charter was silent on the matter, the working paper aimed at analysing the relationship between these two principal organs and offering a precise definition of such a relationship. The reference was made to point 2 of the proposal, which reviewed ways to enhance this relationship on the basis of Articles 15 and 24 of the Charter. The sponsor also referred to point 3 of its proposal, discussing the principle of consensus among the permanent members in relation to the work of the Security Council, which it considered to be contrary to the principles of democracy and legality. It was also stressed that the decisions on procedural matters under Article 27, paragraph 2, of the Charter required identification.

87. The sponsor delegation reiterated that it was imperative to consider the question of the role of the United Nations in maintaining international peace and security and considered it unfortunate that its proposal had only been discussed in a partial way, despite the support it had received. The sponsor delegation noted that it was aware that there were divergent views on the matter. It would be unfortunate if the delay was simply due to lack of political will.

88. Referring to the future consideration of its proposal, the sponsor delegation stressed that it, together with the proposals by Cuba (see chap. III.E above), should be taken into account in relation to the reform process of the General Assembly and the Security Council. It suggested that the Special Committee should recommend that the Sixth Committee consider the legal aspects of the two proposals and make the necessary recommendation to the General Assembly.

G. Consideration of the revised working paper submitted by Belarus and the Russian Federation

89. During the general exchange of views held at the 245th meeting of the Special Committee, the Russian Federation, as a co-sponsor, referred to the revised working paper, submitted by Belarus and the Russian Federation at the 2001 session of the Special Committee (A/AC.182/L.104/Rev.2),[14] in which it was recommended, inter

alia, that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence. It was pointed out that the proposal was topical and was aimed at protecting the key principles of the Charter and confirming, in particular, the principle of non-use of force.

90. Some delegations reiterated their support for the proposal. It was stated that the proposal had a basis in the principle of non-use of force as formulated in the Charter.

91. At the 4th meeting of the Working Group, the representative of Belarus, as co-sponsor of the proposal, stated that the proposed draft resolution contained in the working paper was based on one of the fundamental principles of international law, as set forth in paragraph 4 of Article 2 of the Charter, the principle of the non-use of force or threat of force. The co-sponsor stressed that the proposal was aimed solely at strengthening the system for the maintenance of international peace and security, based on the Charter, and would assist the Security Council in carrying out its primary responsibility for the maintenance of international peace and security in an effective fashion. It was pointed out that the use of armed force in international relations was governed by the peremptory norms of the Charter and was permissible only in the exercise of the right of self-defence, pursuant to Article 51 of the Charter, or on the basis of a decision of the Security Council, in accordance with Articles 39 and 42 of Chapter VII of the Charter, that is, in case of any threat to the peace, breach of the peace, or act of aggression. The co-sponsor further stated that new approaches had recently emerged in the interpretation of the provisions of the Charter concerning the use of armed force under regional arrangements and by regional agencies, pursuant to paragraph 1 of Article 53, as well as through an expansive interpretation of the right of self-defence, for instance, for the purpose of combating international terrorism. The advisory opinion of the International Court of Justice would help to answer the question regarding the legality of the above approaches and would contribute to the uniform interpretation and application of the relevant provisions of the Charter. It would also affirm that the Security Council plays a key role in legitimizing any enforcement action or use of armed force by individual States, groups of States, as well as regional and subregional bodies. The co-sponsor suggested that the Special Committee take a non-confrontational approach, focusing on legal issues, in its consideration of the proposal.

* * *

92. During the general exchange of views at the 245th meeting of the Special Committee on 29 March 2004, a statement was made on the existence of the United Nations Command and actions to be taken by the United Nations.

Chapter IV
Peaceful settlement of disputes

93. The Special Committee considered the item "Peaceful settlement of disputes" during the general exchange of views held at its 245th meeting, on 29 March 2004, as well as during the 7th meeting of the Working Group of the Whole on 5 April 2004.

94. The point was made that the Special Committee should enhance efforts to identify proposals for discussion on this item since a review of the Committee's past achievements showed that it was in this area that some impressive and valuable successes had been registered. Achievements included instruments and initiatives of a general nature, such as the Manila Declaration of the Peaceful Settlement of International Disputes;[28] the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field;[29] General Assembly resolution 57/26 of 19 November 2002 on prevention and peaceful settlement of disputes as well as the *Handbook on the peaceful settlement of disputes between States*.[30] There were also accomplishments concerning specific means of peaceful settlement of disputes, including the document on resort to a commission of good offices, mediation or conciliation within the United Nations;[31] the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security[32] and the Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security;[33] the United Nations Model Rules for the Conciliation of Disputes between States[34] as well as General Assembly resolution 54/108 on strengthening of the International Court of Justice.

95. Bearing in mind the appeal contained in General Assembly resolution 57/337 of 3 July 2003 on prevention of armed conflicts, the Committee was challenged to be innovative and to devise, for example, ways and means of enhancing the various methods of resolution of disputes as elaborated in the *Handbook*. Such possibilities existed in the area of arbitration. It was thus suggested that the Special Committee could consider ways of facilitating resort to arbitration by States by drawing their attention to texts of *compromis* or compromissory clauses adopted after the publication of the *Handbook* and other developments that had taken place since then.

96. In this regard, attention was drawn to the Optional Rules for Arbitrating Disputes between Two States; the Optional Rules for Arbitrating Disputes between Two Parties of Which Only One is a State; Optional Rules for Arbitration between International Organizations and Private Parties; and the Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment, adopted by the Permanent Court of Arbitration, as well as other materials on dispute settlement published by it; the Arbitration Rules of the United Nations Commission on International Trade Law;[35] and the Rules of Procedure for Arbitration Proceedings of the International Centre for Settlement of Investment Disputes. Other examples, included texts of *compromis* in United Nations reports of International Arbitral Awards as well as compromissory clauses in bilateral agreements between the International Bank on Reconstruction and Development and Governments as well as in multilateral treaties such as: the Lusaka Agreement on Cooperative

Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora;[36] the United Nations Convention on the Law of the Sea;[37] the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations;[38] the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal;[39] the Convention on Environmental Impact Assessment in a Transboundary Context;[40] the Convention on Biological Diversity;[41] the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa;[42] the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters;[43] and the Vienna Convention for the Protection of the Ozone Layer.[44]

97. While recognizing the importance of peaceful settlement of disputes and the need to encourage States to have recourse to third party disputes settlement mechanisms, the principle of free choice of means was stressed. It was suggested that any consideration of third party dispute settlement mechanism should focus on procedures rather than substance.

98. It was also suggested that the Committee could discuss practical ways of encouraging States to make the optional declaration under paragraph 2 of article 36 of the Statute of the International Court of Justice with regard to its compulsory jurisdiction. Another area mentioned for possible consideration by the Special Committee concerned assistance that could be provided for the Security Council to have better recourse to Chapter VI, as an alternative to the use of coercive measures, in the exercise of its powers under Article 24, paragraph 2, of the Charter.

Chapter V

Proposals concerning the Trusteeship Council

99. During the general exchange of views held at the 245th meeting of the Special Committee on 29 March 2004, some delegations reiterated their view that it would be premature to abolish the Trusteeship Council or to change its status since the Council's existence did not entail any financial implications for the United Nations and assigning new functions to it would require an amendment to the Charter. It was pointed out that the abolition of the Council or a change of its status should be considered in the overall context of the reform of the Organization. A view was also expressed that the purpose for which the Council had been established by the Charter was still of relevance and that paragraph 1(*c*) of Article 77 of the Charter could be applied.

100. At the 6th meeting of the Working Group, on 2 April, some delegations supported a careful examination of all possible options as regards the revision of the role of the Trusteeship Council suggested by the Secretary-General in his statement before the General Assembly at its fifty-eighth session,[45] in the light of new kinds of responsibility given to the United Nations in recent years. They pointed out that the views of States whose territories or neighbouring territories were placed under trusteeship in the past would be an important element in any examination of this issue. The view that it would be premature to abolish the Council or to change its status since the Council's existence did not entail any financial implications for the Organization and that assigning new functions to it would require an amendment to the Charter of the United Nations was also reiterated.

Chapter VI

Repertory of Practice of United Nations Organs and *Repertoire of the Practice of the Security Council*

101. During the general exchange of views at the 245th meeting of the Special Committee on 29 March 2004, some delegations welcomed and further encouraged the ongoing efforts by the Secretary-General aimed at reducing the backlog in the publication of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* and favoured continuation of their publication. Both publications were viewed as valuable sources of information on the application of the Charter and the work of the Organization and an indispensable tool for the preservation of the institutional memory of the Organization, enabling it to improve its practices and decision-making. The point was also made that the publications were useful as long as they were up to date and that, in accordance with the mandate reconfirmed by the General Assembly in resolution 58/248, based on the recommendations of the Special Committee, further efforts should be made to reduce the time needed for making them available. The point was made, in particular, that the *Repertory* could provide the Organization with the much-needed analysis of the current practice of the Security Council regarding the Council's interpretation and application of the Articles of the Charter that defined its constitutional powers. Some delegations expressed regret concerning the fact that the budget for the biennium 2004-2005 did not envisage funds for the publication of the *Repertory*. Reference was also made to the request addressed to the Secretary-General to explore different options and find the necessary resources for continuing the publication of the *Repertory*, including possible cooperation with academic institutions. A view was also expressed that the issue of alternative financial resources could be considered in a Main Committee. Some delegations expressed their support for the establishment of a trust fund for the publication of the *Repertory*, based on voluntary contributions, such as the one created for the preparation of the *Repertoire of the Practice of the Security Council*.

102. At the 6th meeting of the Working Group, on 2 April, a request was made that the Secretariat should report to the Special Committee on the status of the publications.

103. At the 7th meeting of the Working Group, on 5 April, in response to the above request, an oral report on the status of the *Repertoire of the Practice of the Security Council* was made by the Deputy Director of the Security Council Affairs Division of the Department of Political Affairs. Referring to the Secretary-General's report (A/58/347), she pointed out that the Secretariat was developing a two-track approach for future volumes, that is, simultaneously beginning to draft a supplement for the period covering 1996-1999 as well as a contemporary volume covering the period 2000-2003. The aim of this approach was, first, to continue to address the backlog in the publication by producing a streamlined version of the *Repertoire* incorporating all relevant aspects of previous supplements, and secondly, focusing on the contemporary practice and procedure of the Security Council. The stated intention was to post individual chapters of the publication, once approved, on the United Nations web site in an "advance version". It was further pointed out that supplement No. 11 should begin to be available in this format in the spring of 2004, and that chapters of supplement No. 12 should follow shortly thereafter. It was also announced that supplement No. 10, covering the period 1985-1988, had been

published in all official languages and that the possibility of making it available on the web site in languages other than English was being explored. Gratitude was expressed towards Member States that had contributed to the trust fund for the *Repertoire*. However, Member States were urged to make further contributions to the Fund, which has now been depleted.

104. The Assistant Secretary-General, Officer-in-Charge of the Office of Legal Affairs, reported to the Working Group on the status of the *Repertory of Practice of United Nations Organs*. He provided information on the progress achieved in 2003, including the finalization and submission for publication of four volumes and the progress in the preparation of numerous studies for several other volumes; the overall status of the *Repertory*, comprising 24 published volumes and 5 volumes submitted for publication; and the United Nations web site for the *Repertory*, which provided access to studies from all 29 volumes as well as to studies on individual Charter Articles from volumes not yet completed. All studies were available in English and a number of them also in French and Spanish. A pilot project undertaken in cooperation with academia involving a group of externs was also referred to. He further stated that the General Assembly, in paragraph 44 of its resolution 58/270 of 23 December 2003, requesting the Secretary-General to report, in the context of the first performance report, on the possibilities for absorptions or the mobilization of extrabudgetary resources for the *Repertory of Practice*, did not provide for the *Repertory* as an output of the Organization for 2004-2005 and that, therefore, no resources were provided for its implementation. The impact of this situation is currently under review within the departments involved in the preparation of the publication.

105. Delegations expressed their gratitude for the reports by the Deputy Director of the Security Council Affairs Division and the Assistant Secretary-General, Officer-in-Charge of the Office of Legal Affairs, commented on some points raised therein and asked some questions. They reaffirmed the importance and usefulness of both publications. It was also highlighted that the publications were a unique tool for the preservation of the institutional memory of the United Nations. In that regard, the efforts of the Secretary-General aimed at eliminating the existing backlog and continuing both publications were welcomed and encouraged.

106. With respect to the *Repertory*, delegations welcomed the significant progress achieved in the elimination of the backlog and the placement of advanced versions of studies on the Internet. However, concern was expressed that the most serious backlog concerned Articles 23 to 54 of the Charter, which, dealing as they do with the functions and powers of the Security Council, were among the most important Articles thereof, and, moreover, raised difficult issues of interpretation. This situation was considered particularly regrettable and paradoxical inasmuch as only a limited backlog existed in respect of the *Repertoire*, which deals solely with the Security Council's provisional rules of procedure.

107. Support was reiterated by some delegations for the establishment of a trust fund for the preparation of the *Repertory* similar to the one already existing for the preparation of the *Repertoire*. Some delegations also expressed their support for cooperation with academic institutions, and in particular for the pilot project involving the assistance of externs, while stressing at the same time the United Nations authorship of the publication and the Secretariat's supervision of the work in order to maintain the high quality of the publication.

108. Concern was expressed by some delegations regarding the fact that for 2004-2005 no resources were provided for the *Repertory*. Some delegations stated that General Assembly resolution 58/270 did not negatively affect the mandate as regards the continuation of the publication of the *Repertory*. As regards paragraph 44 of the resolution, some delegations recalled that no decision of the Assembly had been taken, in accordance with regulation 5.6 of the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation (ST/SGB/2000/8), to discontinue the publication of the *Repertory*. It was pointed out that in the light of the support for the continuation of work on both publications expressed during the previous sessions of the Special Committee and the Sixth Committee, the work on the publication should continue. A view was also expressed that discontinuation of the work at the current stage, when significant progress had been achieved in the elimination of the backlog, would result in a waste of resources already invested in that publication thus far and would create another backlog.

109. In response to the request made by some delegations for clarification regarding the interpretation of General Assembly resolution 58/270 as well as the relevant part of the statement of the Assistant Secretary-General, Officer-in-Charge of the Office of Legal Affairs, concerning the implications of the resolution on the publication of the *Repertory*, delegations were referred to the specific language of resolution 58/270 and its relevant annex.

110. A specific suggestion was made that the Special Committee should recommend the establishment of a trust fund for the *Repertory*, so as to resolve the current financial difficulties relating to its preparation. Some delegations, however, pointed out that such a proposal should be formally submitted to the Special Committee as an official document and indicated that they would need time to consult with their respective Governments on the proposal.

111. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization recommends to the General Assembly to review at the appropriate technical level the possibility of establishing, at its fifty-ninth session, a trust fund for the preparation, updating and publication of the *Repertory of Practice of United Nations Organs*, which should accept solely voluntary contributions by States and private institutions and individuals.

Chapter VII
Working methods of the Special Committee and identification of new subjects

A. Working methods of the Special Committee

112. During the general exchange of views, held at the 245th meeting of the Special Committee on 29 March 2004, Japan, together with the other co-sponsors, the Republic of Korea, Thailand and Uganda, introduced a revised working paper regarding the working methods of the Special Committee (A/AC.182/L.108/Rev.3). It was subsequently announced that Australia had joined the co-sponsors. It was observed that the revised working paper reflected the suggestions made during the previous session, while, at the same time, maintaining the substantive aim and strategies for improving the working methods of the Special Committee as contained in the previous working paper. The revised working paper[46] reads as follows:

> "In response to a request made in accordance with paragraph 3 (e) of General Assembly resolution **58/248** of **23 December 2003**, the Special Committee agreed on the following **points** to improve its working methods and enhance its efficiency:
>
> "*(a) Any delegation wishing to submit a new proposal is encouraged:*
>
> "*(i) To bear in mind the mandate of the Special Committee as set out in General Assembly resolution 3499 (XXX) of 15 December 1975, and to ascertain to the extent possible, that the new proposal would not entail the same work being done by other bodies on the same subject, provided that the rights of delegations to make proposals should not be affected;*
>
> "*(ii) To submit the proposal as far in advance of the session as possible;*
>
> "(b) A delegation submitting a proposal is encouraged:
>
> "(i) To request the Committee to conduct a preliminary evaluation as to its necessity and appropriateness at the first meeting of the Committee;
>
> "(ii) After an exchange of views is held on its proposal, to assess the priority and the urgency of the proposal in comparison with other proposals discussed in the Committee and to consider, where appropriate, the postponement or biennialization of the consideration of its proposal;
>
> "(iii) After the proposal has been discussed at reasonable length, to ask the Committee, where appropriate, to suggest whether the discussion on the proposal should be continued, taking into account the possibility of reaching a **consensus** in future **in the light of paragraph 5 of General Assembly resolution 50/52 of 11 December 1995**;
>
> "(c) The Special Committee is determined:

"(i) To ensure that the meeting is conducted as efficiently as possible in order to minimize the **unnecessary use** of time and resources, including allocated conference services;

"(ii) To accord priority to the consideration of those areas on which general agreement is possible, bearing in mind **paragraph 2** of General Assembly resolution 3499 (XXX) of 15 December 1975;

"(iii) To consider, where appropriate, the question of the duration of its next session with a view to making an appropriate recommendation to the General Assembly;

"*(iv) To review, as and when necessary, other ways and means of improving its working methods and enhancing its efficiency, including ways and means of improving the procedure for the adoption of its report.*"

113. At the same meeting, support was expressed for the revised working paper, as well as interest in further discussion on it. It was felt that, on the basis of consensus, ways to improve the work of the Committee and enhance its efficiency should be sought. The importance of beginning meetings on time and better using conference services was stressed.

114. The view was expressed that the Special Committee could better focus on fewer topics and that relevant proposals should be submitted well in advance to allow for thorough reflection. It was suggested that a short- and medium-term programme of work could be established. The need to avoid duplication of work of other United Nations bodies, such as the Security Council's Working Group on General Issues on Sanctions and the General Assembly's Special Committee on Peacekeeping Operations, was emphasized. Support was also expressed for keeping the current schedule of meetings and for giving equal importance to all topics on the Committee's agenda.

115. At its 5th meeting, on 1 April 2004, the Working Group considered the revised working paper regarding the working methods of the Special Committee. Japan informed the Working Group of the outcome of the informal consultations on the revised working paper, coordinated by it. Taking into account the various points of view expressed during the informal consultations, the sponsor delegations, on 2 April 2004, submitted a further revised version of the working paper,[47] for consideration at the 2005 session of the Special Committee, which reads as follows:

"In response to a request made in accordance with paragraph 3 (e) of General Assembly resolution 58/248 of 23 December 2003, the Special Committee agreed on the following points to improve its working methods and enhance its efficiency:

"*(a) Any delegation wishing to submit a new proposal is encouraged:*

"*(i) To bear in mind the mandate of the Special Committee as set out in General Assembly resolution 3499 (XXX) of 15 December 1975, and to ascertain, to the extent possible, that the new proposal would not entail the same work being done by other bodies on the same subject, provided that the rights of delegations to make proposals should not be affected;*

"(ii) To submit the proposal as far in advance of the session as possible;

"(b) A delegation submitting a proposal is encouraged:

"(i) To request the Committee to conduct a preliminary **exchange of views** as to its **usefulness** at the first meeting of the Committee, **bearing in mind the right of each State to submit proposals in keeping with the mandate of the Special Committee**;

"(ii) After an exchange of views is held on its proposal, to assess the priority of the proposal in comparison with other proposals discussed in the Committee, and to consider, where appropriate, the postponement or biennialization of the consideration of its proposal, **without prejudice to the right of any State to submit proposals**;

"(iii) After the proposal has been discussed at reasonable length, to ask the Committee, where appropriate, to **look into the usefulness of further discussing the proposal**, taking into account the likelihood of reaching a consensus in future in the light of paragraph 5 of General Assembly resolution 50/52 of 11 December 1995;*

"(c) The Special Committee is determined:

"(i) To ensure that the meeting is conducted as efficiently as possible in order to rationalize the use of time and resources, including allocated conference services;

"(ii) To accord priority to the consideration of those areas on which general agreement is possible, bearing in mind paragraph 2 of General Assembly resolution 3499 (XXX) of 15 December 1975;

"(iii) To consider, where appropriate, the question of the duration of its next session with a view to making an appropriate recommendation to the General Assembly;

"(iv) To review, as and when necessary, other ways and means of improving its working methods and enhancing its efficiency, including ways and means of improving the procedure for the adoption of its report."

* In the event that a delegation submitting a proposal withdraws its proposal, such withdrawal does not preclude the delegation from subsequently resubmitting that proposal, if the delegation considers that, with the passage of time, the proposal has become more useful.

B. Identification of new subjects

116. At the 7th meeting of the Working Group of the Whole, on 5 April 2004, a proposal was put forward for consideration by the Special Committee, which reads as follows: "Arbitration of disputes between States: possible usefulness of complementing the relevant information in the *Handbook on the peaceful settlement of disputes between States*". It was explained that, since the *Handbook* had been published some 10 years ago, current information on the subject of arbitration was lacking and that, in this regard, such consideration may be useful. Conversely, the view was also expressed that taking up the subject of arbitration by the Special Committee may prove to be unnecessary at this time.

Notes

[1] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33* (A/36/33), para. 7.

[2] A/48/573-S/26705, A/49/356, A/50/60-S/1995/1, A/50/361, A/50/423, A/51/317, A/52/308, A/53/312, A/54/383 and Add.1, A/55/295 and Add.1, A/56/303, A/57/165 and Add.1 and A/58/346.

[3] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 33* (A/58/33), para. 39.

[4] Ibid., *Fifty-seventh Session, Supplement No. 33* (A/57/33), para. 54.

[5] Ibid., *Fifty-fifth Session, Supplement No. 33* (A/55/33), paras. 50-97.

[6] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 45.

[7] Ibid., *Fifty-seventh Session, Supplement No. 33* (A/57/33), para. 89.

[8] Ibid., *Fifty-sixth Session, Supplement No. 33* (A/56/33), para. 116.

[9] Ibid., *Fifty-second Session, Supplement No. 33* and corrigendum (A/52/33 and Corr.1), para. 58.

[10] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 73.

[11] Ibid., para. 84.

[12] Ibid., para. 98.

[13] Ibid., *Fifty-fourth Session, Supplement No. 33* and corrigendum (A/54/33 and Corr.1), para. 101.

[14] Ibid., *Fifty-sixth Session, Supplement No. 33* (A/56/33), para. 178.

[15] Ibid., *Fifty-eighth Session, Supplement No. 33* (A/58/33), paras. 187-205.

[16] Ibid., *Fifty-seventh Session, Supplement No. 33* (A/57/33), para. 171.

[17] Ibid., *Fifty-fifth Session, Supplement No. 33* (A/55/33), para. 195.

[18] Ibid., paras. 163-193.

[19] A/57/165 and Add.1; see also A/56/303 and A/58/346.

[20] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 33* (A/58/33).

[21] The wording appearing in bold face type reflects the changes made to the provisions set out in the previous working paper (A/AC.182/L.114/Rev.1).

[22] For the report of the Sixth Committee, see A/55/613 and Corr.1.

[23] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 33* (A/56/33), paras. 114-138, and ibid., *Fifty-seventh Session, Supplement No. 33* (A/57/33), paras. 88-114.

[34] Ibid., *Fifty-eighth Session, Supplement No. 33* (A/58/33), paras. 127-147.

[35] For the original formulation of the principles, see *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 33* (A/56/33), para. 116.

[36] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33), para. 73.

[37] See General Assembly resolution 55/2.

[38] General Assembly resolution 37/10, annex.

[39] General Assembly resolution 43/51, annex.

[40] United Nations publication, Sales No. E.92.V.7.

[41] General Assembly decision 44/415, annex.

[42] General Assembly resolution 46/59, annex.

[43] General Assembly resolution 49/57, annex.

[44] General Assembly resolution 50/50, annex.

[45] General Assembly resolution 31/98.

[46] United Nations, *Treaty Series*, vol. 1950, No. 33409.

[47] United Nations, *Treaty Series*, vol. 1833, No. 31363.

[48] A/CONF.129/15.

[49] United Nations, *Treaty Series*, vol. 1673, No. 28911.

[50] United Nations, *Treaty Series*, vol. 1989, No. 34028.

[51] United Nations, *Treaty Series*, vol. 1760, No. 30619.

[52] United Nations, *Treaty Series*, vol. 1954, No. 33480.

[53] ECE/CEP/43; see also *International Legal Materials*, vol. 38, No. 3, May 1999.

[54] United Nations, *Treaty Series*, vol. 1513, No. 26164.

[55] See A/58/PV.7.

[56] The provisions appearing in italics were provisionally adopted by the Committee at its 2003 session. The wording in bold reflects changes made to the provisions set out in the previous working paper (A/AC.182/L.108/Rev.2).

[57] The provisions in italics were provisionally adopted at the 2003 session. The wording set out in bold reflects comments made by several delegations during informal consultation held on 1 April 2004.

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